IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

S.B. CIVIL SECOND APPEAL NO.499/2006
Nagar Parishad Bharatpr Vs. Duli Chand

27.11.2007.

HON'BLE MR. JUSTICE DALIP SINGH

Shri Brij Kishore Sharma, for the appellant.
Shri O.P.Sharma, for the respondent.

This is Board's second appeal against the judgment of both the courts below who have decreed the suit of the plaintiff Duli Chand against the Board and passed the decree of permanent injunction in favour of the plaintiff respondent.

In this case the auction took place on 4.4.1978 and 1/4th price arising of the bid was deposited immediately by the plaintiff who was the successful bidder.

The balance amount of 3/4th was deposited by the plaintiff on 3.1.1980 with delay only on account of the fact that as stated by the plaintiff that he was waiting for a formal information of the acceptance of his bid and the demand to be raised by the Municipal Board for the balance ¾th amount. The case of the Board is that no such demand was required to be raised nor is any notice required to be issued.

It is further submitted that the maximum period which the Board can allow for depositing 3/4th amount is 10 months as per Rule 14 read with

Annexure-A Clause 'f' of the Rules of 1974.

The learned counsel for the respondent has submitted that even if the para 'f' of Annexure-A is to be applied it was open for the Board under para 'F' (iii) to recommend to the State Government for the regularisation of the bid and the late deposit of the amount. Though it is the case of the respondent that the clause 'f' was inserted by the amendment w.e.f. 3.8.1983 i.e. after the amount had been deposited on 3.1.1980 by the plaintiff and the Board had accepted the same with interest and penalty and as such the same does not strictly apply to the cases which arose prior to the said amendment.

Having heard the learned counsel for the parties. I am of the view that the submission of the learned counsel for the respondent deserves to be accepted in as much as the provisions of clause 'F' were introduced by way of amendment vide notification No.9 dated 3.8.1983 and since the auction admittedly was held on 4.4.1978 and the 3/4th amount was deposited on 3.1.1980 i.e. prior to the amendment the provisions of clause 'F'(ii) and clause (iii) and have no application. In the facts and circumstances of the present case the said provisions cannot operate retrospectively to the detriment of the plaintiff who had deposited the amount prior to the amendment on 3.1.1980 with interest and penalty.

In the instant case it is admitted that the plaintiff having deposited the amount on 3.1.1980 also applied for permission of the Board for raising construction which was accorded to the plaintiff by the Board on 2.9.1983.

In view of the above I find no force in this second appeal and the same is consequently dismissed.

(DALIP SINGH),J.

Ramchandrkhatri,PS